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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	CC Docket No. 96-128
Reclassification and Compensation	)	File No. NSD-L-99-34
Provisions of the Telecommunications	)	
Act of 1996	)	

**REPLY COMMENTS OF QWEST COMMUNICATIONS CORPORATION**

Qwest Communications Corporation ("Qwest"), by its attorneys, hereby files its reply comments on the petition of the RBOC/GTE/SNET Payphone Coalition ("RBOC Coalition") seeking clarification, on a going-forward basis, of which interexchange carrier ("IXC") is the party responsible for paying per-call compensation for dial-around or access code calls placed from payphones. 1/

**INTRODUCTION AND SUMMARY**

In its petition, the RBOC Coalition asserts that the Commission should "clarify" its payphone compensation rules because payphone service providers ("PSPs") are supposedly experiencing a shortfall in compensation payments. 2/ Specifically, the RBOC Coalition claims that, from this point forward, the carrier identified by the Carrier Identification Code ("CIC") associated with the

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1/ See *In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Petition for Clarification* (filed Feb. 26, 1999) ("*RBOC Coalition Petition*").

2/ *Id.* at 1, 3-4.

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compensable call should be responsible for paying per-call compensation for that call. 3/

With the exception of one party (a coalition of independent payphone providers that stands to gain if the RBOC Coalition's position is adopted), none of the parties that filed comments supports the RBOC Coalition's petition. 4/ As explained in further detail below, these commenters point out that the RBOC Coalition's petition seeks a rule change, not a "clarification," and is therefore procedurally defective. These parties also indicate that changing the Commission's per-call compensation rules in the manner requested by the RBOC Coalition would harm many types of carriers, and that significant and adequate remedies are already available to PSPs to collect payment under the Commission's current compensation rules.

As described more fully below, Qwest agrees wholeheartedly with these commenters and believes that the RBOC Coalition's petition should be rejected. The RBOC Coalition has not adequately shown that a significant shortfall exists, and even if one does, it has failed to explain why -- apart from reasons of its own administrative convenience -- carrier with their own CICs should be forced to shoulder the burden caused by the non-payment of compensation by other identifiable carriers.

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3/ *Id.* at 4.

4/ AT&T did not specifically endorse the RBOC Coalition's petition; it indicated that it would have no objection to a rule which embodied the practice sought by the petition. Comments of AT&T Corp., filed May 17, 1999, at 1.

Qwest and many other carriers have done, and continue to do, everything required of them by the Commission's rules in order to ensure that PSPs receive the compensation they are owed. The Commission should not change the rules at this late stage in the process merely to placate the concerns of PSPs who wish to receive compensation for calls without enduring their fair share of the costs associated with collecting it.

#### **I. THE RBOC COALITION'S PETITION IS PROCEDURALLY FLAWED.**

As explained by a number of commenters, the RBOC Coalition's petition is procedurally defective. <sup>5/</sup> In its *First Payphone Order*, the Commission assigned to facilities-based carriers the responsibility of making compensation payments to PSPs for dial-around and access code calls placed from payphones. <sup>6/</sup> The Commission subsequently defined "facilities-based carriers" as carriers that maintain their own switching capability, regardless of whether they own or lease their switching equipment. <sup>7/</sup>

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<sup>5/</sup> See *Opposition of the Telecommunications Resellers Association TRA*, filed May 17, 1999, ("TRA") at 4-6; *see also* *Comments of the International Telecard Association*, filed May 17, 1999, ("ITA") at 4-5 (indicating that the Commission routinely dismisses petitions for clarification where the relief sought is really a rule change); *Comments of Cable & Wireless USA, Inc.*, filed May 17, 1999, ("Cable & Wireless") at 3 (calling the RBOC Coalition's petition "an exercise in procedural gamesmanship").

<sup>6/</sup> See *In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, et al.*, CC Docket No. 96-128, *Report and Order*, 11 FCC Rcd 20541, 20586 (1996) ("*First Payphone Order*").

<sup>7/</sup> See *In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, et al.*, CC Docket No. 96-128, *First Report and Order on Reconsideration*, 11 FCC Rcd 21233, 21277 (1997) ("*First Payphone Order on Reconsideration*").

The RBOC Coalition's petition seeks to change this approach by having the Commission place the obligation of paying per-call compensation on the entity identified by the CIC used to route the compensable call from the local exchange carrier's network. <sup>8/</sup> In seeking to alter the mechanism by which responsibility for the payment of per-call compensation is assigned, the RBOC Coalition is requesting that the Commission initiate a rule change, not a "clarification." Under the Commission's rules, this cannot be done outside of the formal rulemaking process.

As explained by TRA and Sprint, it is well settled that the Commission may not constructively rewrite a rule by reinterpreting it. <sup>9/</sup> The procedural guarantees of notice and comment would not be meaningful if such a course were followed. <sup>10/</sup> Significantly, the RBOC Coalition itself characterized its proposal as a rule "revision" in an earlier letter on the subject to the Common Carrier Bureau. <sup>11/</sup> Pretending that the RBOC Coalition's petition amounts to anything other than an outright request to change the Commission's existing rules would therefore be improper.

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<sup>8/</sup> RBOC Coalition Petition at 2.

<sup>9/</sup> TRA at 5, citing *National Family Planning and Reproductive Health Assoc., Inc. et al. v. Sullivan*, 979 F.2d 227, 231 (D.C. Cir. 1992). Comments of Sprint Corporation, filed May 17, 1999, ("Sprint") at 2-3.

<sup>10/</sup> TRA at 5, citing *Secretary of Labor v. Western Fuels-Utah, Inc.*, 900 F.2d 318, 327 (D.C. Cir. 1990).

<sup>11/</sup> See TRA at 6 (citing Letter from Michael Kellogg, counsel to the RBOC/GTE/SNET Coalition, to Lawrence Strickling, Chief, Common Carrier Bureau, Federal Communications Commission, dated Nov. 17, 1998, at 6); Sprint at 2 (same).

## II. THE CURRENT COMPENSATION RULES SHOULD NOT BE CHANGED.

Even if the RBOC Coalition had filed the appropriate petition seeking a rule change, there is no compelling reason to alter the Commission's current per-call compensation rules. To begin with, the Commission's payphone compensation rules are the product of a long and arduous process that has yet to come to a close. <sup>12/</sup> That being said, the issue of which carrier is responsible for paying per-call compensation has heretofore been settled. <sup>13/</sup> As indicated by ITA and others, it is imperative that carriers be able to rely upon the finality of the rulemaking process. <sup>14/</sup> Changing the compensation rules at this time in the manner requested by the RBOC Coalition would, as ITA correctly stated, "put an administrative monkey-wrench in a process that is already costly, confusing and burdensome for all involved." <sup>15/</sup>

As indicated by a number of commenters, the RBOC Coalition has presented no tangible evidence that PSPs are not receiving adequate compensation from IXC's. <sup>16/</sup> Moreover, the RBOC Coalition has failed to show any causal linkage between the purported shortfall and the Commission's current compensation

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<sup>12/</sup> See ITA at 2.

<sup>13/</sup> See *First Payphone Order* at 20586; *First Payphone Order on Reconsideration* at 21277.

<sup>14/</sup> See *id.* at 2, 4; see also Comments of Qwest Communications Corporation, filed May 17, 1999, ("Qwest") at 4.

<sup>15/</sup> ITA at 2.

<sup>16/</sup> See Cable & Wireless at 4; Comments of MCI WorldCom, Inc., filed May 17, 1999, ("MCI WorldCom") at 3-5.

rules. 17/ The change sought by the RBOC Coalition therefore, at the very least, would require further, impartial investigation before additional action could be justified.

Placing the payment obligation for dial-around and access code payphone calls on the carrier identified by the CIC associated with the compensable call would potentially harm many types of carriers. In its initial comments, Qwest explained how such a requirement would require it and other facilities-based IXC's to initiate a costly systems change. 18/ Other carriers made similar contentions. 19/ The Commission should not require carriers to overhaul their billing systems now -- especially when they are fully compliant with the current rules -- to supposedly make it easier for PSPs to collect payment.

### **III. ADEQUATE REMEDIES FOR NON-PAYMENT ALREADY EXIST.**

If certain switched-based resellers fail to pay PSPs the per-call compensation they are owed, adequate remedies already exist to ensure that they are held accountable. For instance, PSPs can utilize the Commission's formal complaint process to ensure that they receive payment. 20/

The principal argument presented by the APCC -- the only party to support the RBOC Coalition's petition -- for why the responsibility for payment should be

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17/ See TRA at 6; Comments of Frontier Corporation, filed May 17, 1997, ("Frontier") at 4.

18/ See Qwest at 4-6.

19/ See Sprint at 3-4; Frontier at 5; *see also* TRA at 8-9.

20/ See, e.g., ITA at 4; *see also* Qwest at 3.

CIC-based is that PSPs have very limited information about what happens to a call once it leaves their payphone. PSPs, the APCC argues, therefore have no way of knowing which switched-based resellers owe them payment. 21/

The fact is that the Commission has already addressed this situation. 22/ Specifically, in an earlier order issued in this proceeding, the Commission held that “a facilities-based carrier must indicate, *on request by the billing PSP*, whether it is paying per-call compensation for a particular 800 number. If it is not, then it must identify the switched-based reseller responsible for paying payphone compensation for that particular 800 number.” 23/ Thus, to the extent there is a shortfall in the level of compensation collected and the PSP believes it is caused by non-payment by a switched-based reseller, the PSP is already empowered to request information about the switched-based reseller from the underlying carrier to enable it to collect payment. 24/

There is therefore no reason for the Commission to overhaul the existing payphone compensation structure -- one that has taken many years and a

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21/ See Comments of the American Public Communications Council, filed May 17, 1999, at 3-4 (calling the task of identifying and extracting payment from switched-based resellers “monumental”).

22/ See *In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Memorandum Opinion and Order*, 13 FCC Rcd 10883, 10915-16 (1998), *citing First Payphone Order on Reconsideration* at 21277.

23/ *Id.* (emphasis added). See also *Cable & Wireless* at 8-9; *MCI WorldCom* at 3; *Frontier* at 4.

24/ See *Frontier* at 4.

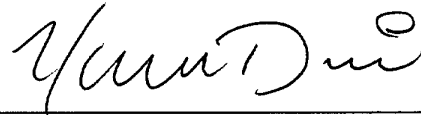
significant amount of resources to put in place -- merely to placate the ire of PSPs who already have significant resources at their disposal to resolve any alleged non-payment problem.

### CONCLUSION

For the reasons described herein, the Commission should reject the RBOC Coalition's petition, and should affirm that its current rules adequately address the compensation obligations of IXC's for dial-around and access code calls placed from payphones.

Respectfully submitted,

QWEST COMMUNICATIONS CORP.



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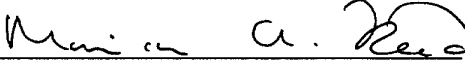
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